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only be explained on the latter of the two above theories. For if an Indian marriage were inherently peculiar only such marriages would be terminable at will, and a marriage contracted outside the tribe would not be affected. On the view in the principal case, two Indians who had migrated to a state that did not permit that form of divorce would find themselves united for life. Therefore America and England probably agree in defining marriage as a union for life.

The recognition of tribal marriage does not prevent a sovereign from forbidding certain monogamous unions for life on the ground that they are incestuous, or against its public policy, such as, for example, the intermarriage of a white and a black person. Nevertheless, both England and America recognize these marriages, if lawfully entered into by foreigners in a foreign country.⁹ But they have both hesitated when their own subjects have gone into another country thus to evade the laws of their domicile.¹⁰ They have based their refusal on the doctrine of the Civil law that the personal law of a subject follows him into whatever land he may journey. They cite Huber and other Continental jurists.¹¹ But the common law knows no such doctrine. Territoriality and not allegiance is the basis of jurisdiction. But these decisions are explicable, as in the last analysis, the sovereign of the domicile of the parties can in extreme cases refuse to superimpose the status of marriage upon a valid contract of marriage, when the nature of the union seems to it abhorrent. The parties would, then, be treated as married everywhere but in their own country.

NATURE OF CRIMINAL CONTEMPT. — A criminal contempt is an act or refusal to act which by detracting from the dignity or authority of a court tends to interfere with the administration of justice. The importance of a summary dealing with it produced a unique procedure, which was early seized upon to enforce the decrees of equity in civil suits.¹ A refusal to do justice to other parties in equity suits thus came to be known as civil contempt, although it is not inherently a contempt of court at all. Confusion has inevitably arisen, because of the similar procedure and the similar result in imprisonment or fine. Both contempts may, in fact, be found in a single act of disobedience.² It follows that the nature of the act itself cannot be a conclusive test of the character of the contempt, as the language of some English cases implies.³ Such a test can only be found in the particular purpose for which the imprisonment or fine is to be used.⁴ If punishment is sought, the contempt is criminal; if

⁹ *Re Bozzelli's Settlement*, [1902] 1 Ch. 751.

¹⁰ *Brook v. Brook*, 9 H. L. Cas. *193; *State v. Tully*, 41 Fed. 753; *Dupre v. Boulard*, 10 La. Ann. 411. Massachusetts has maintained that the domicile of the parties can make no difference. *Medway v. Needham*, 16 Mass. 157; *Commonwealth v. Lane*, 113 Mass. 458; *Sutton v. Warren*, 10 Met. (Mass.) 451. See also *Pearson v. Pearson*, 51 Cal. 120; *Steele v. Braddell*, Milw. 1.

¹¹ See *Brook v. Brook*, *supra*, *208.

¹ See 21 HARV. L. REV. 161.

² See *Bessette v. W. B. Conkey Co.*, 194 U. S. 324, 329, 24 Sup. Ct. 665, 667.

³ See *In re Freston*, 11 Q. B. D. 545; *In re Gent*, 40 Ch. D. 190.

⁴ See *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418, 443, 31 Sup. Ct. 492, 499.

compulsion or compensation, it is civil.⁵ In the past the form of the proceeding has shed no light on this, and to-day both purposes may sometimes be accomplished in one decree.⁶ But a recent decision of the Supreme Court of the United States,⁷ declaring that imprisonment serving no civil purpose cannot be imposed in a process civil in form, forces the prosecuting party to disclose the purpose of the proceeding at the outset. Statutes⁸ in many states have indirectly had the same effect of making the distinction easier.

It is more difficult to determine just how far common-law principles as to crimes, whose partial application to criminal contempt makes necessary the above distinction, should be applied. In England the privileges of Parliament,⁹ of attorneys,¹⁰ and of freedom from search¹¹ protect against arrest for civil contempt only. In this country the accused must have the criminal intent,¹² must be proved guilty beyond a reasonable doubt,¹³ and cannot at common law be made to testify against himself.¹⁴ Probably he may be pardoned by the executive.¹⁵ On the other hand, he has not a right to jury trial, to be confronted with witnesses, or always to be informed of the nature of the accusation.¹⁶ It seems that at common law, contempt is a crime and is dealt with by criminal principles, unless those principles interfere with the summary procedure necessary to a proper vindication of the court's authority.

A similar question arises as to the applicability to criminal contempt of statutory and constitutional provisions concerning criminal offenses in general. The privileges conferred on the accused "in all criminal prosecutions" by the Sixth Amendment do not extend to contempt.¹⁷ Yet statutes regulating appeal¹⁸ and extradition,¹⁹ and possibly the constitutional provision against self-incrimination²⁰ have precisely the opposite effect. The courts seem to take the view that, although contempt is a crime, the word "criminal" may at times be used in a narrower sense excluding contempt. Intention to employ this narrow meaning may be shown by the context or other circumstances. A recent case, which

⁵ *Gompers v. Bucks Stove & Range Co.*, *supra*; *Dodd v. Una*, 40 N. J. Eq. 672, 5 Atl. 155; *Wellesley's Case*, 2 Russ. & M. 639.

⁶ See the decree in *Matter of Christensen Engineering Co.*, 194 U. S. 458, 24 Sup. Ct. 720. Cf. *Kreplik v. Couch Patents Co.*, 190 Fed. 565.

⁷ *Gompers v. Bucks Stove & Range Co.*, *supra*.

⁸ N. Y. CONSOL. LAWS, 1909, c. 30 (N. Y. LAWS OF 1909, c. 35), § 750; WIS. STAT., 1898, § 2565.

⁹ *In re Armstrong*, [1892] 1 Q. B. 327; *Wellesley's Case*, *supra*.

¹⁰ *In re Freston*, *supra*.

¹¹ *Harvey v. Harvey*, 26 Ch. D. 644.

¹² *Telegram Newspaper Co. v. Commonwealth*, 172 Mass. 294, 52 N. E. 445.

¹³ *Oscar Barnett Foundry Co. v. Crowe*, 74 Atl. 964 (N. J.).

¹⁴ *Bates's Case*, 55 N. H. 325.

¹⁵ *Sharp v. State*, 102 Tenn. 9, 49 S. W. 752; *State v. Sauvinet*, 24 La. Ann. 119. See *In re Mullee*, 7 Blatchf. (U. S.) 23. *Contra*, *Taylor v. Goodrich*, 40 S. W. 515 (Tex.). See *In re Nevitt*, 117 Fed. 448, 456. Cf. *Matter of Special Reference*, [1893] A. C. 138.

¹⁶ *Ex parte Terry*, 128 U. S. 289, 9 Sup. Ct. 77.

¹⁷ *In re Debs*, 158 U. S. 564, 15 Sup. Ct. 900.

¹⁸ *New Orleans v. Steamship Co.*, 20 Wall. (U. S.) 387; *Hurley v. Commonwealth*, 188 Mass. 443, 74 N. E. 677; *O'Shea v. O'Shea*, 15 P. D. 59.

¹⁹ *United States v. Jacobi*, 1 Flip. (U. S.) 108, Fed. Cas. No. 15,460.

²⁰ *Ex parte Gould*, 99 Cal. 360, 33 Pac. 1112. Cf. *Boyd v. United States*, 116 U. S. 616, 634, 6 Sup. Ct. 524, 534.

holds that a prosecution for contempt is not barred by the federal Statute of Limitations for crimes, seems correct on this ground.²¹ *In re Gompers*, 39 Wash. L. R. 761 (D. C., Sup. Ct.). Also, in the absence of any clear intention, general statutory provisions for criminal offenses, like general common-law principles of the criminal law, should not be applied to contempt, if they conflict with its characteristic procedure. But otherwise contempt should be treated as other crimes, because like them it is in its nature a wrong to the state.

CONSTITUTIONALITY OF STATUTORY ADMINISTRATION ON ESTATE OF ABSENTEE IRRESPECTIVE OF DEATH. — Administration of abandoned property during the absence of the owner is generally recognized as a right and duty of the sovereign under the Civil Law,¹ and so was early introduced into Louisiana.² It has had little development in the other states, suffering undoubtedly from confusion with the ordinary common-law administration of estates.³ Since that depended upon the termination of the previous title by death,⁴ the mere finding by the probate court could not be conclusive of the fact of death, as against a living absentee, even in collateral proceedings.⁵ Statutes⁶ requiring the question to be adjudicated, or recognizing the common-law presumption arising from seven years' absence⁷ as sufficient evidence of death, failed to protect administrators and innocent third parties, for they did not purport to confer a new jurisdiction to deprive a living man of his title in favor of others.⁸ But the decision of the Supreme Court to this effect⁹ was widely and long construed as denying the power of the state, through appropriate legislation, to exercise a distinct jurisdiction over the property itself irrespective of the death of the owner, based solely upon his continued absence without tidings.¹⁰

²¹ U. S. REV. STAT., 1875, § 1044. See *Matheson v. Hanna-Schoellkopf Co.*, 122 Fed. 836. Cf. *Beattie v. People*, 33 Ill. App. 651; *Gordon v. Commonwealth*, 141 Ky. 461, 133 S. W. 206. The federal statute reads: "No person shall be prosecuted . . . unless the indictment is found, or the information is instituted within three years next after such offense shall have been committed." Contempt is usually prosecuted on affidavit, or on the court's own motion. Furthermore, contempt is not classified among the other crimes in the U. S. Revised Statutes.

¹ WRIGHT, FRENCH CIV. CODE, § 112 *et seq.*; LOEWY, GERMAN CIV. CODE, § 1911 *et seq.*

² MERRICK'S LA. REV. CIV. CODE, 1900, art. 47 *et seq.*

³ See 19 HARV. L. REV. 535; 22 *id.* 522.

⁴ *Devlin v. Commonwealth*, 101 Pa. St. 273. See *Mutual Benefit Ins. Co. v. Tisdale*, 91 U. S. 238, 243; *Melia v. Simmons*, 45 Wis. 334.

⁵ *Jochumsen v. Suffolk Savings Bank*, 3 All. (Mass.) 87. See *Griffith v. Frazier*, 8 Cranch (U. S.) 9, 23.

⁶ See *Roderigas v. East River Savings Institution*, 63 N. Y. 460; *Selden's Exr. v. Kennedy*, 104 Va. 826, 52 S. E. 635.

⁷ *Wentworth v. Wentworth*, 71 Me. 72.

⁸ *Lavin v. Emigrant, etc. Bank*, 1 Fed. 641. See *Thomas v. People*, 107 Ill. 517, 526, 527.

⁹ *Scott v. McNeal*, 154 U. S. 34, 14 Sup. Ct. 1108.

¹⁰ *Carr v. Brown*, 20 R. I. 215, 38 Atl. 9; *Beck's Estate*, 15 Pa. Co. Ct. R. 564. See *Clapp v. Houg*, 12 N. D. 600, 608, 98 N. W. 710, 713; *Lavin v. Emigrant, etc. Bank*, *supra*, 675.